

Decision 01-09-011 September 6, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own  
Motion to Consider Adoption of Rules  
Applicable to Interexchange Carriers for the  
Transfer of Customers Including  
Establishing Penalties for Unauthorized  
Transfer.

Rulemaking 97-08-001  
(Filed August 1, 1997)

Investigation on the Commission's Own  
Motion to Consider Adoption of Rules  
Applicable to Interexchange Carriers for the  
Transfer of Customers Including  
Establishing Penalties for Unauthorized  
Transfer.

Investigation 97-08-002  
(Filed August 1, 1997)

**O P I N I O N**

This decision awards The Utility Reform Network (TURN) \$62,126.75, and the Latino Issues Forum/The Greenlining Institute (Latino Issues/Greenlining) \$73,344.00 in compensation for their respective contributions to Decisions (D.) 00-03-020, D.00-05-052, and D.00-11-015.

**1. Background**

The Commission opened this proceeding to determine if it could better protect consumers against unauthorized charging by telephone providers while still making it easy for customers to exercise their choice so as to enhance vigorous competition. In the decisions issued in this proceeding, the

Commission increased protection of California consumers by prohibiting local exchange companies from disconnecting local service for nonpayment of charges for other than local service, adopted Subscriber Complaint Reporting Rules that require billing telephone companies and billing agents to track and report billing disputes pursuant to Pub. Util. Code § 2889.9, and required local exchange carriers to implement a consumer education program designed to inform customers of their dispute rights.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. (All statutory citations are to the Pub. Util. Code.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's<sup>1</sup> planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. TURN timely filed its request for an award of compensation on December 21, 2000. Under § 1804(c), an intervenor

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<sup>1</sup> To be eligible for compensation, an intervenor must be a customer as defined by Section 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.)

requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

### **3. NOI to Claim Compensation**

TURN timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding by a ruling dated February 11, 1998. The same ruling found that TURN had demonstrated significant financial hardship.

Latino Issues/Greenlining timely filed their NOI on October 8, 1997, and were found to be eligible for compensation by a ruling dated February 11, 1998. Latino Issues/Greenlining now seek a determination that they face significant

financial hardship within the meaning of § 1802(g). Latino Issues/Greenlining stated that they represent California's low-income, new immigrant, and other vulnerable telecommunications customers, and that their members' potential economic interests in this proceeding are small compared to the costs of effective participation. Consistent with D.00-04-011, we find that Latino Issues/Greenlining have met the significant financial hardship test.

#### **4. Substantial Contribution to Resolution of Issues**

A party may make a substantial contribution to a decision in one of several ways.<sup>2</sup> It may offer a factual or legal contention upon which the Commission relied in making a decision,<sup>3</sup> or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.<sup>4</sup> A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

We discuss below TURN's and Latino Issues/Greenlining's contributions to each of the decisions issued in this proceeding.

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<sup>2</sup> Section 1802(h).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

**TURN**

**D.00-03-020**

TURN stated that it contributed to the local service disconnection policy adopted in this decision. In addition to TURN's advocacy for a rule only slightly narrower than the one adopted, the Commission also agreed with TURN on the procedural issue of whether that policy could be changed without holding evidentiary hearings.

TURN also stated that it made a substantial contribution to the portions of the decision addressing the role that the local exchange carriers play in protecting customers from unauthorized charges. TURN contended that the Commission adopted the comprehensive approach it urged to the cramming problem, including the critical role of the billing telephone company.

We agree that TURN made substantial contributions to D.00-03-020 in the areas it identified. We adopted TURN's proposals in whole or in part and benefited from its policy discussion on all of those issues that it addressed.

**D.00-05-052**

In this decision, the Commission denied AT&T, MCI, and Sprint's joint application for rehearing of D.00-03-020, and redocketed it as a petition for modification. TURN stated that the Commission adopted TURN's contention, in its comments filed jointly with the Office of Ratepayer Advocates (ORA), that the applicants had failed to identify any legal error in the decision.

We agree that TURN made a substantial contribution to D.00-05-052 in the narrow issue that decision addressed. We essentially adopted the outcome TURN sought.

**D.00-11-015**

The Commission here rejected the petition for modification of AT&T, MCI, and Sprint. The Commission agreed with TURN that the proceeding was far too advanced to consider the toll blocking issue as petitioners had suggested.

The primary focus of the decision was to narrow the range of charges for which a local exchange carrier is authorized to disconnect local service. TURN stated that the final rule adopted by the Commission was substantially similar to the one advocated by TURN. The Commission explicitly recognized TURN's contribution to the issue of whether the revision was based on record evidence by finding TURN's reply comments "persuasive." We agree that TURN made a substantial contribution to D.00-11-015 on the issues resolved.

**Latino Issues/Greenlining**

**D.00-03-020**

Latino Issues/Greenlining stated they were instrumental in advancing the position that the Commission must abolish the then-existing local service disconnection policy. They say the decision adopts their position that the then-existing policy was anti-consumer, anachronistic since the justification for the policy had expired, and antithetical to preventing slamming and cramming in that customers were afraid not to pay unauthorized charges for fear of losing local service. They also say the decision affirmed, as they advocated throughout the proceeding, that aggressive enforcement against unethical carriers, and heightened staff capacity to gather and track complaints, was essential to curb abuses. Finally, they say the decision adopted their position that community-based organizations, among other means, should be used to help language minority customers to lower the higher rate of service disputes among these customers and carriers.

We agree that Latino Issues/Greenlining made substantial contributions to D.00-03-020 in the areas they identified.

**D.00-11-015**

In this decision, as noted above, the Commission rejected the petition for modification of AT&T, MCI, and Sprint. Latino Issues/Greenlining stated that the Commission agreed with their contention that the purpose of the no disconnect rule was to protect basic service whether flat or measured. Latino Issue/Greenlining also stated that the Commission adopted their positions that statutory requirements included record-keeping and reporting for billing telephone companies and affiliates, and that billing agents must possess adequate information to permit the Commission to track complaints. In addition, Latino Issues/Greenlining maintained that the Commission adopted

their point that customers need to have a legitimate business name by which to identify carriers, whether it be the name on the carrier's certificate of public convenience and necessity, a properly registered fictitious business name, or the name on any Federal Communications Commission certificate or business license. Latino Issues/Greenlining noted that the Commission quoted directly from their reply brief on whether to interject the issue of full toll denial at a late stage in the proceeding.

We agree that Latino Issues/Greenlining made a substantial contribution to D.00-11-015 on the issues there resolved.

## **5. The Reasonableness of Requested Compensation**

TURN requests compensation of \$62,126.75 as follows:

### Advocate's Fees

Paul Stein

1998	47.75 hours @ \$170/hour = \$ 8,117.50
1999	124.5 hours @ \$190/hour = \$23,607.50
2000	37.00 hours @ \$200/hour = \$ 7,400.00
	16.00 hours @ \$100/hour <sup>5</sup> = \$ 1,600.00

Thomas J. Long

1997	16.50 hours @ \$250/hour = \$ 4,125.00
1998	39.00 hours @ \$260/hour = \$10,140.00
	SUBTOTAL = <b>\$54,990.00</b>

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<sup>5</sup> Preparation of compensation request at one half usual rate.



## Consultant's Fees

Gayatri M. Schilberg

1999      27 hours @ \$110/hour =      \$ 2,970.00

**SUBTOTAL = \$57,900.00**

## Expenses

(photocopying, postage, etc.) \$4,326.75

**TURN TOTAL = \$62,126.75**

Latino Issues/Greenlining request compensation of \$94,466 as follows:

## Advocate's Fees

Susan Brown      217.05 hours @ \$275/hour =      \$ 59,414

Robert Gnaizda    21.85 hours @ \$375/hour =        \$ 8,194

Chris Witteman 40.1 hours @ \$250/hour = \$ 10,025

SUBTOTAL = **\$77,633**

### Expert's Fees

John Gamboa      2.2 hours @ \$250/hour =      \$   550

Jose Hernandez    139.5 hours @ \$105/hour =            \$14,648

SUBTOTAL = **\$15,198**

## Expenses

(photocopying, postage, etc.) \$ 1,635

**Latino Issues/Greenlining TOTAL = \$94,466**

## 5.1 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo. at 31-33, and Finding of Fact 42). In

that decision we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

TURN stated that its contributions were not only substantial but also distinct from the issues and arguments raised by other intervenors. TURN also stated that the benefits to ratepayers of its participation exceeded the costs it claimed. We agree. This proceeding included a variety of consumer protection issues, including the drafting of new rules in response to recent legislation as well as the revision of policies that had become out-of-date. TURN's legal expertise, as well as practical knowledge of consumer interests, assisted the Commission in arriving at its conclusions.

Latino Issues/Greenlining stated that without their participation, the Commission would not have received direct evidence from language minority customers about the effect of the local disconnection policy on them, or have had low-income consumers' perspective on the need for education about their rights. We acknowledge Latino Issues/Greenlining's unique role in this proceeding in advancing the interests of its client groups.

Quantifying the benefits of participation is often difficult in rulemakings such as this one, so we must rely on more qualitative standards in such proceedings. Here, given the significance of the rules and policies we adopted, and their impact on residential customers, we are satisfied that the compensation we award today is for productive participation, within the meaning of the statute.

## **5.2 Hours Claimed**

TURN documented the claimed hours by presenting a daily breakdown of hours for each advocate and consultant with a brief description of each activity. The hourly breakdown presented by TURN reasonably supports its claim for total hours.

Latino Issues/Greenlining presented a similar daily breakdown of hours for each advocate and expert with a brief description of each activity. In most cases, the hourly breakdown presented reasonably supports the claimed hours.

The hours allocated to preparation of the request for intervenor compensation fees, however, are unreasonable. The request presented by Latino Issues/Greenlining showed one total number of hours for each advocate or expert multiplied by an hourly fee. This breakdown is inadequate for three reasons. First, the hours were not broken down by years. The Commission's longstanding practice is to apply the annual hourly rate approved for a particular advocate or expert for work performed in a particular calendar year. An aggregate total for a multi-year proceeding, such as this one, is improper. To obtain a breakdown of hours by years requires our staff to do work that should have been done by the claimant. Second, the annual hourly rates applied here by Latino Issues/Greenlining previously had been rejected by this Commission. Again, to properly calculate the award our staff had to perform work that should have been done by the claimant. Third, the hours attributed to preparing this request were not separately tabulated and charged at half the authorized hourly rate. Our staff performed this task, which was properly Latino Issues/Greenlining's responsibility. For these three reasons, all time allocated to

preparing the intervenor compensation request<sup>6</sup> has been removed from Latino Issues/Greenlining's original tabulation of hours, and we will not award any compensation for this time.

### **5.3 Hourly Rates**

TURN proposes new hourly rates of \$190 and \$200 for Stein (for 1999 and 2000). TURN provides market rates and other information, previously submitted, to justify the request. The last approved hourly rate for Stein was \$170 for 1998, adopted in D.98-08-016. Since 1998, Stein has represented TURN in a number of energy and telecommunications proceedings before the Commission. Based upon the information TURN has provided, it is reasonable to increase Stein's rates to the level requested by TURN.

The hourly rates for Long, \$250/hour in 1997 and \$260/hour for 1998, were previously approved by the Commission in D.98-09-032 (for 1997) and D.99-07-045 (for 1998).

TURN comments that the hourly rate for Schilberg, its consulting economist, was approved by the Commission in D.00-05-006 for work performed in the energy field, and that the same rate should be used here.

We find TURN's requested hourly rates to be reasonable and consistent with our past treatment of attorney and expert fees for comparable work.

For work performed in 1997 and 1998, Latino Issues/Greenlining uses hourly rates other than those that this Commission has previously approved for their attorneys and experts in these timeframes. Instead, for work performed in 1997 and 1998, Latino Issues/Greenlining seeks compensation at rates they

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<sup>6</sup> Susan Brown attributed 31 billed hours to the fee request. These hours have been removed from total hours allowed in Section 7 below.

propose the Commission adopt for work performed in 1999. This request is troubling because it expressly disregards prior Commission decisions under which a rate adopted for the work of a given person in a particular year is to be used in all decisions for that person's work done in that same year. Such disregard is blatant because Latino Issues/Greenlining acknowledges, in footnote 31 of its request, past hourly rates for work performed in 1997 and 1998 by reference to specific Commission decisions and then declares that these are "rates erroneously adopted by the Commission in the past." Latino Issues/Greenlining knows or should know that the proper avenue for addressing legal error is to file an application for rehearing, rather than to engage in such collateral attack on prior Commission decisions.

The compensation request of Latino Issues/Greenlining is also deficient in that it does not break down the number of hours worked by year. As indicated above, Latino Issues/Greenlining billed all hours at their proposed rates for 1999. From the detailed records provided, however, we have recalculated the number of hours worked by year. When applicable, we also use hourly rates adopted in prior Commission decisions. For Witteman, we use the same hourly rates as for TURN's Stein, given their comparable experience and skill level. We follow D.00-04-011 and award Hernandez \$75 an hour. For work performed in 1999 we will use \$250 as the hourly rate for Brown and \$270 for Gnaizda. For work performed in 2000, we will increase the hourly rates for Brown and Gnaizda by \$10 each to \$260 and \$280. We do so reluctantly given the express disregard of prior Commission decisions by senior attorneys Brown and Gnaizda. These increases are made in light of market rates paid to other attorneys. As corrected, Latino Issues/Greenlining's hourly rates are reasonable.

#### 5.4 Other Costs

“Other costs” typically include copying, postage, and fax, phone or internet usage. TURN and Latino Issues/Greenlining have documented these costs adequately. They are substantial but still reasonable given the size of the service list and the length of this proceeding.

#### 6. Award

We award TURN \$62,126.75, the full amount requested, calculated as described above.

We award Latino Issues/Greenlining compensation \$73,344.00 as follows:

##### Advocate's Fees

Susan E. Brown

1997	11.85 hours @ \$240/hour =	\$ 2,844.00
1998	43.1 hours @ \$250/hour =	\$10,775.00
1999	114.3 hours @ \$250/hour =	\$28,575.00
2000	20.8 hours @ \$260/hour =	\$ 5,408.00

Robert Gnaizda

1997	2.15 hours @ \$260/hour =	\$ 559.00
1998	9.75 hours @ \$270/hour =	\$ 2,632.50
1999	9.65 hours @ \$270/hour =	\$ 2,605.50
2000	.3 hours @ \$280/hour =	\$ 84.00

Chris Witteman

1998	8.1 hours @ \$170/hour =	\$1,377.00
1999	31.1 hours @ \$190/hour =	\$5,909.00
2000	.9 hours @ \$200/hour =	\$ 180.00

SUBTOTAL = **\$60,949.00**

## Expert's Fees

John Gamboa

1998            2.2 hours @ \$135/hour =    \$ 297.00

Jose Hernandez

1999      139.5 hours @ \$75/hour =      \$10,463

SUBTOTAL = \$10,760.00

## Expenses

(photocopying, postage, etc.) \$ 1,635.00

**Latino Issue/Greenlining TOTAL<sup>7</sup> = \$73,344.00**

## 7. Payment of Award

In D.00-01-020, we addressed the issue of the payment of intervenor compensation awards in quasi-legislative proceedings affecting an industry or multiple industries. We stated our intent that no later than July 1, 2001, awards in quasi-legislative rulemaking proceedings where no specific respondents are named will be paid from an intervenor compensation program fund. The details of this funding method are set forth in D.00-01-020.

This proceeding is quasi-legislative in nature and affects an entire industry. There is no named respondent. Accordingly the award to TURN shall be paid from the intervenor compensation program fund.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75<sup>th</sup> day after TURN and Latino Issues/Greenlining filed their respective compensation requests and continuing until the

<sup>7</sup> Reduced hours reflect removal of hours for preparing compensation request.

utility makes its full payment of the award. TURN filed its request on December 21, 2000, so the 75<sup>th</sup> day is March 6, 2001. Latino Issues/Greenlining filed their request on December 22, 2000, so the 75<sup>th</sup> day is March 7, 2001.

As in all intervenor compensation decisions, we put TURN and Latino Issues/Greenlining on notice that the Commission Staff may audit their records related to this award. Thus, TURN and Latino Issues/Greenlining must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The records should identify specific issues for which the intervenor requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

## **8. Public Review and Comment**

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment of this compensation decision is being waived.

## **Findings of Fact**

1. TURN has made a timely request for compensation for its contribution to D.00-03-020, D.00-05-052, and D.00-11-015.
2. TURN contributed substantially to D.00-03-020, D.00-05-052, and D.00-11-015.
3. TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.
4. TURN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience, or that have already been approved by the Commission.
5. The miscellaneous costs incurred by TURN are reasonable.



6. Latino Issues/Greenlining has made a timely request for compensation for its contribution to D.00-03-020 and D.00-11-015.

7. Latino Issues/Greenlining meet the standard for financial hardship set out in § 1802(g).

8. Latino Issues/Greenlining contributed substantially to D.00-03-020 and D.00-11-015.

9. Latino Issues/Greenlining's participation was productive in that the costs they claim for participation were less than the benefits realized.

10. As modified, Latino Issues/Greenlining's hourly rates for their attorneys and experts are no greater than the market rates for individuals with comparable training and experience, or that have already been approved by the Commission.

11. The hours allocated to preparation of the intervenor compensation request are unreasonable.

12. The miscellaneous costs incurred by Latino Issues/Greenlining are reasonable.

13. This proceeding is a quasi-legislative proceeding that affects an entire utility industry. There is no named respondent.

### **Conclusions of Law**

1. TURN and Latino Issues/Greenlining have fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded \$62,126.75 for its contribution to D.00-03-020, D.00-05-052, and D.00-11-015.

3. Latino Issues/Greenlining should be awarded \$73,344.00 for their contribution to D.00-03-020 and D.00-11-015.

4. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

5. This order should be effective today so that the intervenors may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Utility Reform Network is awarded \$62,126.75 in compensation for its substantial contribution to Decision (D.) 00-03-020, D.00-05-052, and D.00-11-015.

2. Latino Issues Forum and the Greenlining Institute are awarded \$73,344.00 for their substantial contribution to D.00-03-020 and D.00-11-015.

3. The award shall be paid from the intervenor compensation program fund, as described in D.00-01-020. Interest shall accrue on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning the 75<sup>th</sup> day from the date the respective request was filed and continuing until full payment is made.

4. The comment period for today's decision is waived.

5. Rulemaking 97-08-001 and Investigation 97-08-002 are closed.

This order is effective today.

Dated September 6, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners